



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 48 OF 2016

RMK.....APPELLANT

AND

EMR.....RESPONDENT

(Being an appeal against the ruling and Orders of Hon. L. Gitari Chief

Magistrate at Nairobi Children's Case No. 90 of 2004 delivered on 5th April, 2016)

JUDGMENT

1. The Appellant and the Respondent are parents of two minors:

DMM born in 1998

DM born in 2004

2. Pursuant to a judgment by the lower court dated 20th July 2006, the Respondent(father) was ordered to pay maintenance all-inclusive of Kshs.50,000/- a month to the Appellant. He appears not to have complied.

3. The Appellant as a result of non-payment moved the court by way of notice to show cause, same was heard and orders for committal issued against the respondent. He was arrested on the 24th of December, 2014 for failure to settle the decretal sum calculated at Kshs.4,850,000/=.

4. There is no dispute that at the time of the respondent's arrest the made paid Kshs.1,300,000/= and another sum of Kshs.1,500,000/= a week later. In dispute is whether he paid an additional 200,000/= or 180,000/= on the day of his arrest. Parties are also in agreement that the Respondent paid further upkeep through the Appellant's Mpesa account. The Respondent claims to have paid Kshs.791,471/-into the Mpesa account whereas the Appellant disputes the figure and gives a sum of Kshs.569,872.

5. From the record there is no dispute that albeit late the Respondent paid school fees and rent of Kshs.21,000/- per month.

6. Hon. Boke in the court below was prepared to a large extent to consider the Appellant's version of the mathematics as follows:

24th December 2014 Kshs.1,300,000/=, and

Kshs. 180,000/=

Payment after a week Kshs.1,500,000/=

Mpesa Kshs. 569,872/=

Total Kshs. 3,549,872/=

7. On his part the responds in his computation added school fees for the children and rent as follows:

Dennis upto 2012 Kshs. 180,000/=

Derrick 2012-2014 Kshs. 848,000/=

Rent Kaha. 1, 974,000/=

The court considered school fees and rent so that the total of monies paid based on paragraph 5 and 6 above would give total payment as at July 2014 at Kshs. 6,551,872/=.

8. The Respondent seems content with the court's finding.

9. The Appellant on her part is of the opinion that upon payment of the sums computed in paragraph 5 above the Respondent was in arrears of Kshs 1,474,577, which includes arrears of Kshs 1,300, 129 of the decretal, sum, 25,000/- incurred at his arrest and an additional amount owing from July 2014 to 2015 of Kshs.174,448/= .

The Appellant has not tabulated rent and school fees.

10. Hon. Boke in her computation arrived at Kshs.5,100,00 as the amount payable as at December 2014 having done so she subtracted the following;

Amount admitted of Kshs.3,776,871

School fees Kshs. 180,000/=

Rent paid Kshs.1,974,000/=

Total Kshs.5,930,811/=

Hon. Boke found that the Respondent had an over payment of Kshs.830,871. But since the accounts appeared mixed up She allowed the parties to reconcile their accounts further.

11. Parties failed to agree and thereafter appeared before Hon. Gitari (as she then was) who upon listening to the parties was of the view that the Respondent had made an over payment of Kshs.1,666,691 which the Applicant ought to repay. This ruling is what triggered this appeal.

12. The confusion that arose was occasioned by the Respondent's decision not to pay the maintenance as ordered of Kshs.50,000/= but to split it up by directly paying for school fees and rent and thereafter pay balance available to the Appellant.

13. This court in principle aligns itself with the decision of the Hon. Boke and Hon. Gitari (as she then was) to the extent that rent and school fees ought to be added to sums being computed from the date of judgment and any anomalies in computation of the decretal sum at the time of the Respondent's arrest ought to be corrected.

14. The Amounts due as at December 2014 was Kshs 5,100,000. And in arriving at its computation this court in the interest justice , taking into account that the confusion emanated from the variation of the order by Respondent and for purpose of bringing this long outstanding issue to a closure, will consider the computation by the Appellant and of the Respondent in as far as rent and school fees are concerned as follows:

24/12/2014 **Kshs.1,300,000 +**

180,000

1 week later Kshs.1,500,000

Mpesa (upkeep) Kshs. 569,871

School fess for Dennis Kshs. 180,000

Derrick Kshs. 848,000

Rent as at December,2014 Kshs.2,142,000

Total Kshs.6,989,811

The above calculation indicates excess payment of Kshs.1,797,871 after further subtracting disputed sums of Kshs.25,000 and 72,000 respectively.

15. From the above computation therefore, this appeal cannot succeed as in principle the trial court's ruling cannot be faulted. Whichever version of the calculations to be considered as enumerated above it is clear that the Respondent has over paid

16. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER, 2019.

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ALI-ARONI

JUDGE